Kerala Gazette No. 49 dated 9th December 1980.
PART IA

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 8090|EL1|80|Elec. *Dated, Trivandrum, 17th September 1980.*

Notification No. 82|KL-LA|5|80 dated 3rd September 1980 of the Election Commission of India is hereby published.

By order,
J. S. JESUDHASAN,
Special Secretary (Home) &
Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001.
Dated 3rd September, 1980|
Bhadra 12, 1902 (*Saka*).

NOTIFICATION

No. 82|KL|-LA|5|80.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala dated 31st July, 1980 in Election Petition No. 5 of 1980.

IN THE HIGH COURT OF KERALA AT ERNAKULAM
Thursday the 31st July, 1980|9th Sravana 1902

Present

THE HONOURABLE MR. JUSTICE GEORGE VADAKKEL
ELECTION PETITION No. 5|1980

Petitioner:

Gopala Pillai, son of Kochukunju Panicker alias G. P. Mangalathumadhom, residing at Mangalathumadhom, Pothappally South, Kumarapuram P. O., Via Haripad, Alleppey District.

By Advocate Shri P. H. Sankaranarayana Iyer.

G. 1412

Respondents:

(1) Chandrasekharan Warrier, S/o. Balakrishna Warrier, alias C. B. C. Warrier, residing at Chempakasseri Warriem, Haripad P. O.

(2) Govinda Kurup, son of Raghavan Pillai, residing at Vaikathu Kizhakkethil, (Geeta Nivas) Pullampodam, Pallippad P. O.

Respondent No. 1 by Advocates M/s. M. N. Sukumaran Nair, Mathew Zacharia, N. A. Muraleedharan, B. Raman Pillai, K. K. Dinesan, N. S. Menon, Sunny Varghese.

This Election Petition having been finally heard on 17-7-1980 and having stood over to this day, for consideration the Court delivered the following:—

JUDGMENT

The petitioner and respondents Nos. 1 and 2 contested the general election for the Kerala Legislative Assembly held on 21-1-1980 from No. 103-Haripad Constituency. The 1st respondent is the returned candidate. The petitioner seeks to have the 1st respondent's election declared void. He also prays that it be declared that he himself has been duly elected.

2. The petitioner avers generally that there had been a series of acts and omissions on the part of the Returning Officer and the Assistant Returning Officer which constitute serious violation of the Constitution and the provisions of the Representation of the People Act, 1951 (hereinafter, the Act) and the conduct of the Elections Rules, 1961 (hereinafter, the Rules). The petitioner then proceeds to say in his petition that rule 31 of the Rules has not been complied with. His case is that no correct list of polling stations and polling areas had been furnished to him and that on that account he lost not less than 7000 votes. The petitioner has a further complaint about the specification of the different polling areas for the different polling stations. According to him voters residing in the same locality were to vote in different polling stations and that the respective polling areas of several of the polling stations consisted of portions of different local bodies, Panchayats. The petitioner also alleges that on 17-1-1980 and 18-1-1980 his Chief Election Agent filed two petitions before the Assistant Returning Officer stating that 14 officers allotted to function as polling personnel were 1st respondent's supporters and requesting that they should be replaced by others from the reserve list of polling officers, and that these petitions have not been disposed of. The petitioner has also a case that one Vasu's vote was cast by his younger minor brother, feigning that he is Vasu, and that his polling agent's challenge was not accepted. It is also the case of the petitioner that a deaf and dumb voter was not allowed to vote. The further complaint raised in the petition is that the names of the 10 persons mentioned therein occur in the electoral rolls of the Kayamkulam Constituency also and that they voted in the Haripad Constituency after they voted in the Kayamkulam Constituency. According to the petitioner, besides, his Chief Counting Agent objected to the participation of five members of the counting staff whose names are stated in the petition, but to no avail. The petitioner has complaints about counting and

they are, that all the three members of the counting staff attached to each of the counting tables, namely, the Supervisor and his two assistants, simultaneously sorted the ballot papers speedily so that his counting agent could not effectively check and detect any misplacement of votes in the trays; that there has been such misplacement of ballot papers to the advantage of the 1st respondent; that in tying up the ballot papers into bundles of 50 each, more than 50 ballot papers cast in his favour were put in each such bundle while only less than 50 ballot papers were put in the bundles containing ballot papers cast in favour of the 1st respondent; and that the counting supervisors had made manipulations (he does not specify what they are). The petitioner further pleads that his Election Agent submitted an application for recount but the Returning Officer took no action thereon. It is further averred that the 1st respondent engaged taxies to transport voters and the 1st respondent thereby committed a corrupt practice falling under section 123(5) of the Act.

3. The 1st respondent refutes all the substantial allegations and further contends that by reason of violation, if any, of the Constitution, the Act or the Rules, the result of the election, in so far as it concerns the 1st respondent, has not been materially affected.

4. After discussion at the bar the following issues were raised in this case:—

"(1) Whether the petition is maintainable?

(2) Whether the election of the 1st respondent is liable to be declared as void for all or any of the grounds of corrupt practices alleged in the petition?

(3) Whether the polling and counting of votes in Haripad Constituency were vitiated by any other irregularities or illegalities alleged in the petition?

(4) Whether there was any violation of the provisions of the Representation of the People Act, 1951 and of the Conduct of Elections Rules as alleged by the petitioner? Whether such violation, if any, has materially affected the result of the election?

(5) Whether the relief claimed by the petitioner for a further declaration that he himself has been duly elected is liable to be granted?

(6) Order regarding costs and other reliefs".

5. *Issue* 1:—It has not been shown that the petition is not maintainable. On behalf of the 1st respondent no arguments were advanced on this issue. I find this issue in favour of the petitioner.

6. *Issue* 2:—The only corrupt practice alleged is that the 1st respondent 'had also approved the engagement of taxis to transport voters to the respective booths by the election agents'. According to the averments in the petition on 21-1-1980 on which day poll took place, 1st respondent's agents engaged a car bearing registration No. K.L.M. 856 and transported voters in that car to Polling Station No. 91. It is the further case that the police interfered

and asked the driver by name Yesodharan of Anchuthengil, Kandaloor to desist from so doing. According to the petitioner the police constable on duty recorded First Information Report and also prepared a mahazar attested by Sathyanandan, Kunnel Veedu, Kandalloor. It is contended that this is a corrupt practice falling under section 123(5) of the Act and so the election of the 1st respondent is to be declared void under section 100(1) (b) of the Act.

7. The petitioner relies on the evidence of P. Ws. 4 and 6 to substantiate the above stated allegations. He also examined P. W. 5, the constable on duty on 21-1-1980 in Haripad Constituency. He was asked whether he received any complaint that the 1st respondent transported voters in a car. He denies receipt of any such complaint. P. W. 6 is one of the Polling Agents of the petitioner. He says in examination-in-chief that voters were transported to polling booth he does not specify which for the candidate of the Marxist Party (the 1st respondent). He further deposes that he reported this matter to the police constable on duty and that he made a note of it in his diary. In answer to a leading question as to whether any mahazar was prepared P. W. 6 said that the constable noted on a paper. He has identified that constable as P. W. 5 examined just before this witness was examined. In cross-examination he said that the owner of the car is one Sadasivan Pillai. He also says that he does not know the name of any one of the passengers. He also does not know as to who paid the fare for the car and as to who engaged it, those who travelled in it or some one else. P. W. 4 is the petitioner's Election Agent and Chief Counting Agent. He swears that voters were brought in a taxi car in ward No. 11 in Arattupuzha Panchayat, that the matter was reported to the policeman on duty, that he noted it in his daily diary and prepared a mahazar. But, he in cross-examination admits that all what he deposed as above stated are based on the report he received from Sathyanandan, the Polling Agent. This Sathyanandan is P. W. 6 whose evidence I have discussed earlier herein.

8. The petitioner has not examined Sadasivan Pillai who according to P. W. 6 is the owner of the car nor Yesodharan who as stated in the petition is it's driver. The stand taken on his behalf by his learned counsel is that it is for the 1st respondent to establish that no taxi-car was engaged by him or his agents, since from the evidence discussed above I should deduce that this allegation is true. The learned counsel for the petitioner relied on *Balwan Singh v. Prakash Chand* (A. I. R. 1976 S. C. 1187 at 1193) to argue that from the evidence discussed above I have to infer that the 1st respondent or his agent or some one with his consent or his Election Agent's consent hired or procured, on payment or otherwise, the use of a taxi for the free conveyance of voters. In that case the Supreme Court found that it has been proved that a tractor was used for the conveyance of electors to and from the polling station, and that it was so used by the candidate's workers. It was also found to have been proved that the voters were conveyed free of cost. The evidence in that case had established that the tractor belonged

to the candidate's wife and that the candidate failed to establish his contention that the tractor was used else where for some other purpose. The Supreme Court said that these facts and circumstances would permit the court to draw the inference that the tractor had been procured by the candidate for the free conveyance of electors. The court relied on the principle that—

> "It is not always possible for an election petitioner to adduce direct evidence to prove that a particular vehicle was hired or procured by the candidate or his agent or by any other person with the consent of the candidate or his election agent, but this can be inferred from the proved circumstances where such inference is justifiable" (para 29)

9. P. W. 8 does not say that any of the workers of the 1st respondent was in the car. His evidence as regards the passengers in the car is that electors were transported in this car on two occasion, that on the first occasion there were seven electors in the car besides its driver, and in the next trip, there were seven persons in the car including the driver. He inferred that these passengers in the car were 1st respondent's voters because he saw them talking to 1st respondent's workers in his booth-office. However, his evidence is, it is not known whether these passengers themselves engaged the car or any one else or whether they were transported free of cost. On the evidence as aforesaid of the petitioner's Polling Agent alone it is not possible to hold that the 1st respondent committed a corrupt practice falling under section 123(5) of the Act, for as laid down by the Supreme Court in *Amolok Chand v. Bhagwandas* (A. I. R. 1977 S. C. 813 at 819) it is 'unsafe to accept oral evidence in an election case at its face value without looking for assurance from some surer circumstances or unimpeachable documents'. No circumstance warranting an inference that the 1st respondent is guilty of a corrupt practice falling under section 123(5) of the Act exists.

10. I answer Issue 2 in the negative, that is, against the petitioner and in favour of the 1st respondent.

11. Issues 3 and 4:—These issues can be considered together. On this part of the case, the petitioner's complaint is that section 25 of the Act and Rule 31 of the Rules have not been complied with.

12. Under section 25 the District Election Officer has to provide a sufficient number of polling stations and has to publish, in such manner, as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided. Rule 31 requires that a notice specifying the polling area the electors of which are entitled to vote at the polling station, and when the polling area has more than one polling station, the particulars of the electors so entitled and a copy of the list of contesting candidates shall be displayed prominently outside each polling station.

Ext. P8(a) is the list showing polling stations for No. 103 Haripad Assembly Constituency published as envisaged by section 25 of the Act. This was kept along with Ext. P8 in one cover, and P. W. 10, the District Collector,

Alleppey who is also the District Election Officer produced both these documents pursuant to summons taken in that behalf by the petitioner. (Though the summons required P. W. 10 to produce 'the original list of polling stations in the Haripad Constituency and of the voters allotted to each of them', P. W. 10 says in his deposition that there is no such 'original list' but only a draft list and finalised list). He has proved these documents. He says Ext. P8 is the draft list and Ext. P8 (a) is the final list. Ext. P8 is a carbon copy of the list of polling stations and the respective polling areas prepared in manuscript and is dated 16-10-1979 as is seen from the last page thereof. Ext. P8(a) is a printed copy of the finalised list. According to the evidence of P. W. 10 Ext. P8 list of polling stations (prepared in handwriting) was published in the first instance, and the same was finalised after modifying the same with reference to objections raised. Ext. P8(a) is such final list. The Electoral Registration Officer has signed Ext. P8 under date 16-10-1979. The District Election Officer has also signed it. The case of the petitioner is that the petitioner has not been furnished with the correct list and that he has been furnished only with Ext. P1 list. Ext. P1, like Ext. P8, is another carbon copy of the list prepared in manuscript. It also bears the signatures of the District Election Officer and the Electoral Registration Officer. It is also dated 16-10-1979. The submission is that a copy of Ext. P8(a) finalised list was not furnished to the petitioner, he therefore directed electors to the polling stations on the basis of the draft list, Ext. P1, that when these electors went to the polling stations to which they were so directed they learned that they have gone to wrong polling stations, that this has brought the petitioner to ridicule and contempt and that he lost the support of a large proportion of such voters.

13. The petitioner as P. W. 1 admits in cross-examination that the District Election Officer will usually sent to different political parties a draft list of polling stations for preparing the list of polling stations, and that any objection there to will be considered. As sworn to by him such consideration is with reference to written objections raised by political parties to the assignment of voters to different polling stations and the polling areas specified in the draft list. He has also deposed that before finalising the draft list, the District Election Officer will convene a conference of authorised representatives of political parties, and at that conference the objections about the draft list would be discussed. He has further sworn that the draft list will be finalised only then. It has also come out from his evidence that the finalised list will be printed and printed copies will be sent to the candidates and the various political parties. According to him such printed copies of the finalised list are not furnished on request but would be sent without any request for it.

14. The petitioner, as spoken to by him as P. W. 1, has contested election several times. He knows the manner in which the list envisaged by section 25 is prepared. However, it is his case that he proceeded on the basis that Ext. P1 is the list *published* as required by section 25 of the Act. He has sworn that on all former occasions when he was a candidate printed copy of the list published under section 25 has been sent to him. According to him

a forwarding letter accompanied Ext. P1 and it was in his address. Yet that letter is not in evidence. That letter would have shown the purport of sending Ext. P1 list, and it appears to me that in the light of the evidence discussed above that object would not have been anything other than to intimate the addressee that Ext. P1 is the draft of the list proposed to be published under section 25 of the Act, and to invite objections and suggestions, if any, to be sent to the District Election Officer. In answer to a question as to whether that forwarding letter did not say that Ext. P1 is a draft list, the petitioner's reply is without looking into that letter he cannot say.

15. The further case of the petitioner, as revealed by his deposition as P.W.1 is that he did not receive a copy of the finalised list that was published under section 25 of the Act. The suggestion in the cross-examination is that the petitioner has produced Ext. P1 draft list which in fact was sent to the office of the political party, as a candidate of which he contested the election, suppressing the printed copy of the published list sent to him as a candidate. Taking into account his experience as a candidate who has contested the elections on several occasions, his evidence discussed above which shows that he could not have been misled to believe that Ext. P1 is a copy of the list published under section 25 of the Act and the non-production of the forwarding letter that accompanied Ext. P1, it appears to me that the suggestion as aforesaid is forceful and has to be accepted as probable. At any rate no provision in the Act or the Rules requiring forwarding to the petitioner a copy of the list published under section 25 of the Act has been brought to my notice.

16. So far as contravention of rule 31 of the Rules is concerned the case of the petitioner is not that outside the polling stations notices as required by clause (1) (a) thereof and copies of the list of contesting candidates as directed by clause (1) (b) thereof were not displayed prominently, but that the notices displayed under rule 31 (1) (a) were notices with reference to Ext. P8(a) and not with reference to Ext. P1 which is the same as Ext. P8 draft list. In so far as Ext. P8(a) is the list published under section 25, there is no merit in the complaint as aforesaid.

17. The petitioner estimates in his petition that he would have secured 7000 votes more including the votes of those who have remained apathetic and have not exercised their franchise had Ext. P1 been followed while complying with rule 31 of the Rules in the matter of display of notices specifying the polling area, and the particulars of the electors entitled to vote in the concerned polling stations. There is absolutely no evidence to substantiate the same. Though the petitioner along with the petition has filed Ext. A Schedule (this is Ext. P2) which according to him shows in a tabulated form the number of votes he would have secured, the same is only a guess-work. According to P.W.3 who proves Ext. P2 the 408 persons mentioned in Ext. P2(a) are persons whose names have not been displayed in the polling stations where such names ought to have been displayed as per Ext. P1. Again as stated by P.W. 3 the 856 persons mentioned in Ext. P2(b) are persons whose names have not been displayed in any of the

polling stations. Assuming thot the petitioner's case as revealed by Ext. P2 lo true and is acceptable, still there lo no evidence to come to the conclusion that these 1264 persons sought lo give their voles and|or that they were denied the right to vote. There is also no evidence which will got to show that these persons would have voted foe the petitionee. As held in *S. N. Balakrishna* v. *Fernandez* (A.I.R. 1969 S.C. 1201 at 1205) this 'motlee cannot be considered on possibility' and in such matters there is no scope foe guess-work. It is necessary foe the petitioner to provo by reliable evidence that all these persons would have voted and that they would have voted for him-seo *Vashist Narain* v. *Dev Chandea* (A.I.R. 1954 S.C. 513). Even if it is so proved, so far as the case on hand is concerned, it will not affect the result of the election in so far as the 1st respondent is concerned since the difference between the voles obtained by the 1st respondent and those obtained by the petitioner is 3409.

18. It is the case of the petitionoe that on January 17th and 18th his Election Agent, P. W. 4, filed petitions before the Assistant Returning Officee objecting lo the inclusion of 14 persons in the list of the panel of polling staff. The Assistant Returning Officer also has sworn to the same effect. Ho was asked in examinotion-in-chief whethee P. W. 4 did not submit a complaint on 18-1-1960 and ho has denied receipt of any such complaint on that day. P. W. 10, the District Election Officer was summoned to produce these petitions, and his evidence is to the effect that no such documents are with him. In this state of evidence it is not possible to accept this part of tho petitionee's case as established.

19. The petitioner has a further case that voters residing in the same locality area assigned to different polling stations and thot the polling areas of several of the polling stations consisted of portions of different Panchayat areas. It was submitted at tho time of argument by the learned counsel foe the petitioner that the Haripad Constituency included within its territorial limits 71 Panchayat Wards and there were 115 polling stations. Section 25 of tho Act requires the District Election Officee to provide a sufficient number of polling stations for every Constituency and to publish a list of such polling stations. Ext. P8(o) is the list of such polling stations published under section 25. The evidence already discussed shows that Ext. P8 draft list was first issued, that suggestions and objections were called foe from different political parties was conveaed and Ext. P 8 draft list was modified in the light of the suggestions and objections mado by political parties and after discussion with the various representatives of political parties at such conference. P. W. 10 says that it is so. P. W. 1 sayo that he does not know as to who represented his party at the conference convened by the District Election Officer but he does not say that no such conference was convened, which (as sworn to by him) was the practice followed during previous elections. In view of what lo stated above I am not prepared to hold that thoe was non-compliance of section 25 of the Act or rule 31 of the Rules in tho matter of providing the polling stations and fixing the respective polling areas thereof.

20. On 22-1-1980, the day of counting, P. W. 4, the petitioner's Election Agent who was also his Chief Counting Agent submitted before the Returning Officer, P. W. 8, Ext. P3 complaint. This was at 7.45 a.m. on that day. P. W. 4 therein raised objection to the participation in counting by four members of the counting staff named therein. P. W. 8 thereupon passed Ext. P3(b) proceedings. Therein he said that there is only 15 minutes left for the counting to begin, that, therefore, there is no time to enquire into the allegations made in Ext. P3, that all the counting staff are already in their seats and there are no spare hands to replace any one. As seen from Ext. P3(b) he summoned all the staff and warned them not to give room for any complaint on the basis of dereliction of duties. He also thereby directed four superior officers to watch the four persons about whom complaints were raised. He disposed of Ext. P3 complaint as aforesaid in the presence of P. W. 4. P. W. 8 has deposed that at no time during the counting any further complaint was raised as regards the four persons named in Ext. P3 or as regards any one else. In the light of the facts disclosed by evidence adverted to above, it is not possible to hold that rule 53 of the Rules or any provision of the Act or the Rules has not been complied with (petitioner has not specified the provision which according to him has not been complied with in this regard).

21. The next complaint of the petitioner is about the counting. The evidence as regards this is that of P. Ws. 2, 4 and 11. P. W. 2 was the petitioner's counting agent on Table No. 4. According to him all the three members of the counting staff attached to that table were engaged in sorting the ballot papers and in so sorting, a large number of votes cast in favour of the petitioner were placed in the compartment assigned to place the votes obtained by the 1st respondent. It is this witness's case that on being pointed out and objected to, the counting staff refused to rectify this. According to him not less than 200 votes were lost to the petitioner in this manner. It is his further case that he reported this matter to the Chief Counting Agent, P. W. 4. In cross-examination, his evidence is that such misplacement of votes continued throughout counting, till the very close, and that three or four times he reported to P. W. 4 about such happenings. However, he has not reported these incident to the Returning Officer nor does he know whether P. W. 4 reported to him. According to P. W. 4, it was not possible for the petitioner's counting agents to watch sorting because all the three members of the counting staff were simultaneously sorting and they were so doing standing but without allowing the counting agents to get up and watch the sorting standing. It is also his evidence that it was not possible to verify the number of ballot papers tied into bundles of 50 each because the ballot papers were tied into bundles on the other side of the trays. According to him, on account of the manoeuvres of the counting staff in sorting tying the ballot papers into bundles, the petitioner has lost more than 4000 votes. However, he says that no written complaint was submitted before the Returning Officer though, according to him, he made oral complaints to him after the

bundles were removed from the counting tables to the table of the Returning Officer. In cross-examination he admits that his information about misplacement of votes in wrong compartments and about mistakes in tying the ballot papers into bundles is based on reports received from five or six counting agents of the petitioner. These counting agents except P. Ws. 2 and 11 who reported to him have not given evidence in this case. His estimate of having lost more than 4000 votes is a mere surmise reckoned by him on the basis that about that much votes might have been lost to the petitioner on all the 20 counting tables together, for he says that he cannot say whether he has asked the counting agents of each of these 20 tables as to how many votes were lost to the petitioner on the respective tables on this score. P. W. 11 was the counting agent of the petitioner for Table No.2. His evidence is to the same effect as that of P. W. 2. He also says that all the three members of the counting staff attached to his table were simultaneously and speedily sorting the ballot papers and while so sorting those three staff-members were standing; that while this witness stood up and was watching them sorting he saw several of the ballot papers containing votes given to the petitioner being misplaced; that he once protested in loud voice and that then one or two of the misplaced votes were put in the petitioner's tray; that the Returning Officer asked the counting agents when they stood up to watch the sorting, to sit down; that the misplacement of votes continued throughout; that he was mentally counting the ballot papers which were being tied into bundles of 50 each and that he felt that more than 50 ballot papers were tied into bundles so far as petitioner's bundles were concerned; and that he objected and then one bundle was again counted when it was found that that bundle contained 53 votes. According to him the petitioner lost about 500 votes on his table. According to him he reported these facts to P. W. 4.

22. The evidence of P. Ws. 2, 4 and 11 adverted to in the preceding paragraph has to be viewed bearing in mind that these irregularities in counting spoken to by them have not been pleaded in the petition giving any material facts. The attempt on the part of the petitioner appears to be to elaborate by oral evidence the very vague and too general a plea that there has been mistakes and irregularities in counting. The evidence of P. W. 8 discloses that from the time the counting started till it was over the observer appointed by the Election Commission was present in the counting Hall. It is also to be borne in mind that there is absolutely no evidence that P. W. 4, the Chief Counting Agent, or any one else on his behalf, made any complaints about these alleged irregularities in the matter of sorting and counting to the Returning Officer, P.W.8, the Assistant Returning Officer, P.W.9, or the Observer. P.W.4's evidence is to the effect that after the bundles of ballot papers were removed from the counting tables to the Returning Officer's table he requested to again count these bundles containing misplaced ballot papers and that too, not in writing but orally. However, the Returning Officer examined as P. W. 8 was not asked anything about such request and he does not say any thing about it. On the basis of the evidence discussed above it is not possible to find that

there has been any mistakes or irregularities on a large scale, or that mistakes and irregularities vitiated the counting.

23. The petitioner has averred that the minor younger brother of one Bhuvanendran Vasu who is a voter impersonated that he is Vasu and cast vote. This was, as alleged, in Polling Station No. 66 in Chepad. According to the petitioner his polling agent challenged this voter's identity offering Rs. 2 but the Presiding Officer Shri Kumara Warrier refused to accept the amount and allowed him to vote. It is also alleged that it is known that Shri Kumara Warrier is I respondent's uncle. The evidence regarding this allegation is that of P. Ws. 4 and 7. P. W. 4 says that the Presiding Officer said that he knows the voter personally. He also says that Shri Kumara Warrier is related to the I respondent. However, he admits in crossexamination that his information about this alleged incident is from the polling agent by name Rajamohan. P. W. 4 coming to know of this asked the Presiding Officer about it and it was then (according to P. W. 4) that that officer said that the voter is personally known to him. He does not know the names of the parents of Shri Kumara Warrier. He does not know as to how many borthers or sisters this Officer has. His information that this officer is related to the I respondent is from this officer's brother. P. W. 7 was examined to establish that Shri Kumara Warrier is related to the I respondent. His evidence is to the effect that one Shri Kumara Warrier of Haripad is known to be related to the I respondent, and that his information is that one Shri Kumara Warrier was the Presiding Officer in Chepad polling booth—witness did not go to Chepad on the polling day. He did not enquire of the person who told him that one Shri Kumara Warrier was the Presiding Officer at Chepad as to wherefrom that Shri Kumara Warrier hails, but he thought that this Shri Kumara Warrier is that Shri Kumara Warrier of Haripad. P. W. 7 also does not know the name of the father of Shri Kumara Warrier of Haripad nor does he know to which place I respondent's mother belongs. Finally this witness says that the relationship between Shri Kumara Warrier (of Haripad) and the I respondent may be that of uncle and nephew, or of brothers-in-law; and that he knows they are related but does not know how. Neither the Presiding Officer nor the polling agent who is alleged to have reported the incident to P. W. 4 has been examined in this case. On the evidence of P. W. 4 and P. W. 7, it is not possible to hold that the petitioner has succeeded in proving this allegation. The evidence of P. W. 4 is hear say and I don't think that that of P. W. 7 is worthy of credence.

24. Another allegation in the petition is that one Ramachandran alias Pappu, a deaf and dumb person but who could write was not allowed to give his vote. The evidence on this is only that of P. W. 4—Petitioner's Election Agent. According to P. W. 4 this happened in Polling Station No. 62 in Cheppad. His evidence is that because this voter did not say his name when asked, he was sent out forcibly saying that his has no voting right. Here again P. W. 4 is speaking not on his personal knowledge but on information received from the polling agent of that polling station. He further says that subsequently this deaf and mute person informed his about it by signs.

Neither the polling agent nor the polling officer of Polling Station No. 62 has been examined in this case, and it is unsafe to find that this allegation is true on the evidence of P. W. 4 alone is only heresay information.

25. In paragraph III.C.(2) (e) the petitioner alleges that the names of the 10 persons mentioned therein are on the electoral rolls of both Kayamkulam Constituency and Haripad Constituency, and that they, after giving their votes in Kayamkulam Constituency gave votes in Haripad Constituency also despite protests by the petitioner's polling agents. The only evidence on this aspect is that of P. W. 4. He says that some voters are borne on the electoral rolls of both Kayamkulam and Haripad Constituencies, some of them gave their votes in the Kayamkulam Constituency and then again exercised their franchise in the Haripad Constituency, but he does not remember as to how many. Here again he is speaking on hearsay information obtained from the petitioner's agents who have not been examined in this case. Nor has the petitioner examined the 10 persons mentioned in his petition. I am not prepared to attach any weight to the evidence of P. W. 4 in this regard nor to find that this allegation stands proved.

26. Through the evidence of P. Ws. 3, 4 and 11, the petitioner has attempted to prove that he lost some votes on account of the alleged violation of section 25 of the Act and of rule 31 of the Rules, but they only surmise that some votes might have been lost. It has not been established in this case that the result of the election, in so far as it concerns the I respondent, has been materially affected by any of the illegalities or irregularities alleged in the petition.

27. On Issue 3 my answer is in the negative, that is to say, against the petitioner and in favour of the I respondent. On both the first and second parts of Issue 4 my answer is again in the negative, that is against the petitioner and in favour of the I respondent.

28. *Issue 5*:—In view of my findings on Issues 2 to 4 this issue has to be answered in the negative, that is, against the petitioner and in favour of the I respondent. I do so.

29. *Issue 6*:—Petition fails and is dismissed with costs which I fix as Rs. 1500. The petitioner shall pay the same to the I respondent.

The Registrar shall intimate the substance of the decision in this case to the Election Commission and the Speaker of the Kerala Legislative Assembly without delay, and shall send to the Election Commission an authenticated copy of this decision, as soon as possible, as required by section 103 of the Act.

(Sd.)
GEORGE VADAKKEL,
Judge.

31st July, 1980.

By order,
DHARAM VIR,
Under Secretary to the Election Commission of India.

Kerala Gazette No. 49 dated 9th December 1980.
PART IA

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 9315/EL3/80/Elec.   *Dated, Trivandrum, 31st October 1980.*

Following orders Nos. KL-LA/107/80(31) dated 26-9-1980, KL-LA/81/80(36) dated 7-10-1980, KL-LA/121/80/(38) dated 9-10-1980, of the Election Commission of India are hereby published.

By order,
J. S. Jesudhasan,
Special Secretary (Home) and Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Ashok Road,
New Delhi-110001.

ORDER

Dated 26th September 1980/
No. KL-LA/107/80(31):   Asvina 4, 1902 (Saka).

Whereas the Election Commission is satisfied that Shri K. C. Samuel, Ananda Bhavan, Elavuinthitta P. O., (Kerala), a contesting candidate for general election to the Kerala Legislative Assembly held in January, 1980 from 107-Aranmula Constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, theeefore, in pursuance of seetion 10A of the said Act, the Eleetion Commissioo hereby declares the said Shri K. C. Samuel to be disqualified foe being chosen as, and foe being, a membee of either House of Patliament oe of the Legislative Assembly ot Legislative Council of a State foe a period of three years from the date of this order.

By otdee,
(Sd.)
DHARAM VIR,
Under Secretary to the Election Commission of India.

ELECTION COMMISSION OF INDIA

Ashok Road,
New Delhi-110001.

ORDER

Dated, 7*th October* 1980/
Asvina 15, 1902 (Saka),

No. KL-LA/81/80(36).

Whereas the Election Commission is satisfied that Shri K. P. Varghese. Kizhakkemattom, M. A. College Junction, Kothamangalam (Kerala), a contesting candidate for general election to the Keeala Legislative Assembly held in January, 1980 from 81-Kothamangalam Constituency has failed te lodge an account of his election expenses as requited by the Represcotatioo of the People Act, 1951, and the Rules made thereunder;

And whereas, the said candidate, even after due notiee, has not given aoy reason or explanation for the failure and the Electioo Commission is satisfied that he has oo good reasoo or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri K. P. Varghese to be disqualified fot being chosen as, and foe being a membet of either House of Parliament oe of the Legislative Assembly oe Legislative Council of a State for a period of three years from the date of this order.

By oedet,
(Sd.)
DHARAM VIR,
Under Secretary to the Election Commission of India.

ELECTION COMMISSION OF INDIA

Ashok Road,
New Delhi-110001.

ORDER

Dated, 9th October 1980/
No. KL-LA/121/80(38). Asvina 17, 1902 (Saka).

Whereas the Election Commission is satisfied that Shri Ismail Kunju, Santhinivas, Manappalli P. O., Thazhava (Kerala), a contesting candidate for general election to the Kerala Legislative Assembly held in January, 1980 from 121-Karunagappally Constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10 A of the said Act, the Election Commission hereby declares the said Shri Ismail Kunju to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

By order,
(Sd.)
DHARAM VIR,
Under Secretary to the
Election Commission of India.